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Holly Warden  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|             |  |               |            |
|-------------|--|---------------|------------|
| Applicant:  | Gary Ruvkun et al.                                   | Art Unit:     | 1632       |
| Serial No.: | 08/908,453   | Examiner:     | Shukla, R. |
| Filed:      | August 7, 1997                                       | Customer No.: | 21559      |
| Title:      | AGE-1 POLYPEPTIDES AND RELATED MOLECULES AND METHODS |               |            |

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION TO REQUEST WITHDRAWAL OF  
FINALITY UNDER 37 C.F.R. § 1.181

Appellants hereby request, under 37 C.F.R. § 1.181, that the final rejection of claims 8, 10-13, 15, 16, 19, and 20 as applied in the Final Office Action mailed July 8, 2003 be withdrawn.

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## REMARKS

Appellants submit that a procedural error was made in this case, and that finality of the present Office Action (mailed July 8, 2003) should be withdrawn.

Specifically, in justifying finality of the present action, the Office states:

*Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 8-13-02 prompted the new ground(s) of rejection presented in this Office Action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 609(B)(2)(i).*

This statement is in error. Appellants' submission of an information disclosure statement was not made under 37 CFR 1.97(c), but rather was made under 37 CFR 1.97(d) with a statement under 1.97(e). The references submitted were first cited in a communication from a foreign patent office and were submitted to the USPTO within three months of receipt. In this situation, applying a final rejection is improper.

Appellants first made this request in an Appeal Brief mailed June 2, 2004, pointing out to the Board that this case was not ripe for appeal and asking the Board to remand the case back to the Examiner for proper consideration. As the Examiner has indicated in a Communication dated September 9, 2004 that this is not an appealable issue, Appellants submit this petition.

CONCLUSION

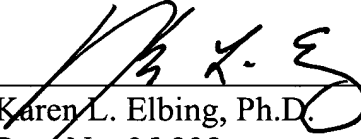
Appellants request that finality of the Office Action mailed July 8, 2003 be withdrawn, and that the Office fully consider Appellants' Reply submitted November 12, 2003.

Enclosed is a check in the amount of \$130.00 in payment of the fee required by 37 C.F.R. § 1.17(h).

If there are any other charges, or any credits, with respect to this petition, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: 12 October 2004

  
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